

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEALS OF VALLEY) APPEAL NOS. 07-A-2200
SUN, LLC from the decisions of the Board of) thru 07-A-2203
Equalization of Custer County for tax year 2007.) FINAL DECISION
) AND ORDER

WILDLIFE EXEMPTION APPEALS

THESE MATTERS came on for consolidated hearing November 28, 2007 in Challis, Idaho before Board Member David E. Kinghorn. Board Member Lyle R. Cobbs participated in this decision. Attorney Douglas A. Werth and witness Jonathan H. Marvel participated at hearing on behalf of Appellant property owner. Attorney Curt R. Thomsen and witness Assessor Christine A. James were present for Respondent Custer County. These appeals are taken from the decision of the Custer County Board of Equalization (BOE) denying exemption applications for taxing purposes of property described as Parcel Nos. RP11N18E350602A, RP11N18E279010A, RP11N18E271801A and RP11N18E265401A.

The issue on appeal is whether unimproved land associated with the subject parcels qualifies for assessment as “land actively devoted to agriculture” pursuant to Idaho Code § 63-605, commonly known as the wildlife exemption.

The decision of the Custer County Board of Equalization is affirmed.

FINDINGS OF FACT

Appellant (Valley Sun) is the record owner of the subject property. The land assessments at issue involve 422.12 acres of rural property previously operated as part of a ranch. The subject land was historically assessed as “land actively devoted to agriculture” up through the 2001 tax year.

For the subject appeals, the proper assessment of improvements and homesite ground associated with two of the subject parcels is not at issue.

Since its last agricultural assessment in 2001, the subject land has been assessed pursuant to the wildlife exemption through tax year 2005. The land has not been used agriculturally from 2002 to present. In 2006, the BOE did not recognize the conservation agreement -- where the land's owner, an Idaho LLC, had as its sole member/manager the other signatory on the agreement. Thus the exempt status was discontinued.

The original 10-year conservation management agreement pertaining to the subject parcels was entered into between Appellant and Idaho Watersheds Project, Inc., a 501(c)(3) non-profit. Watersheds is now known as Western Watersheds Project, Inc. (WWP). Amendments to the agreement have been made from time to time.

From December 2001 thru the 2007 assessment date of January 1, 2007, WWP was the sole member associated with Valley Sun. Attention to this relationship was why the County BOE rejected the agreement in 2006 and then denied renewal of the exempt status. Sometime during the first week of January 2007, WWP sold its sole-member ownership interest in Valley Sun, LLC to an individual (Gordon Younger).

In 2007, the BOE found that due to the loss of exempt status in 2006, which is under appeal in District Court, the subject land had not been consecutively under a conservation agreement or in active ranching for the three (3) years immediately preceding the 2007 assessment date. Thus the exemption was again denied for 2007 and this appeal ensued.

Appellant claims the land is under a bona fide conservation agreement and that all requirements of the exemption statute have been met for 2007. The land has been managed in accordance with the conservation agreement.

Appellant seeks an award of attorney fees and costs under Idaho Code § 12-117.

CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of fair market value or exempt status. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

This 2007 claim for exemption is brought pursuant to Idaho Code § 63-605. This section is one of the Chapter 6 exemptions. Recent amendments to the statute were effective January 1, 2007. House Bill No. 215, 2007 Legislative Session. For the current 2007 tax year, the status of the subject land for taxation purposes was also to be determined on January 1, 2007. Idaho Code § 63-205(1). The key time frames overlap. Section 63-605 provides in pertinent parts:

Land used to protect wildlife and wildlife habitat.

(1) For the tax year commencing January 1, 2007, an application for appraisal, assessment and taxation under this section as land actively devoted to agriculture pursuant to section 63-604, Idaho Code, shall be filed in the office of the county assessor on or before the fourth Monday in June 2007 . . . *Land eligible for this tax status is land which is either:*

(a) Owned and used for wildlife habitat by a private, nonprofit corporation which corporation has a recognized tax exempt status under section 501(c)(3) of the internal Revenue Code, and which corporation qualified for exemption status under section 63-602C, Idaho Code, and which corporation is dedicated to the conservation of wildlife or wildlife habitat; or

(b) Being managed pursuant to a conservation easement or a conservation agreement, as defined in this section and which easement or agreement has been entered into with a private, nonprofit corporation which has a tax exempt status under section 501(c)(3) of the Internal Revenue Code, which corporation qualifies for exemption status under section 63-602C, Idaho Code, and which land qualified, for three (3) consecutive years immediately preceding management of the land pursuant to a conservation easement or a conservation agreement, as land actively devoted to agriculture pursuant to section 63-604, Idaho Code.

(2) As used in this section, "conservation agreement" means a written document between a private, nonprofit corporation enumerated in subsection (1) of this section and the landowner which defines wildlife, flora or fauna or freshwater biota to be protected and outlines a minimum of a ten (10) year management plan

(Emphasis added.)

A conservation agreement is submitted in connection with this claim for exemption. The

property owner is an Idaho limited liability company. The exemption claim is therefore determined to fall under the qualification provisions of subsection (1)(b) above.

“Exemptions are never presumed. The burden is on a claimant to establish clearly a right to exemption. An alleges grant of exemption will be strictly construed. It must be in terms so specific and certain as to leave no room for doubt. An exemption claim cannot be sustained unless it is shown to be within the spirit as well as the letter of the law.” *Bistline v. Bassett*, 47 Idaho 66, 71, 272 P. 696, 698 (1928).

The County argues the subject land is ineligible for the wildlife exemption in 2007, where the land was denied such exempt status in 2006 and was further not farmed or ranched “for three (3) consecutive years immediately preceding” the 2007 assessment. The County denied the exemption in 2006 where the conservation agreement was suggested to be a paper tiger and not an actual binding contract between independent, arm’s-length parties. On both January 1, 2006 and January 1, 2007, the Appellant land owner of record, an Idaho LLC, had as its sole member WWP, the same party who signed the conservation agreement.

The Board holds the relationship on January 1, 2007 between the signatories of the conservation agreement, was not demonstrated to be sufficiently independent to represent the truly independent relationship envisioned by the statute. This is considered a critical qualification standard. Therefore qualification for the exemption under Section (1)(b) was not met for 2007. The decision of the Custer County Board of Equalization will be affirmed.

Appellant has not prevailed on appeal. The request for attorney fees and costs will not be considered further.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the exemption

decision of the Custer County Board of Equalization concerning the subject parcels be, and the same hereby is, affirmed.

MAILED APRIL 30, 2008